

NOTE: This disposition is nonprecedential.



United States Department of the Interior
Office of Hearings and Appeals
Interior Board of Land Appeals
801 N. Quincy St., Suite 300
Arlington, VA 22203

703-235-3750

703-235-8349 (fax)

August 17, 2016

IBLA 2015-215, <i>et al.</i>)	ONRR-11-0007-O&G <i>et al.</i>
)	
DEVON ENERGY PRODUCTION COMPANY, L.P.)	Onshore Oil and Gas Royalties
)	
)	Appeals Severed;
)	Appeal Dismissed

ORDER

Devon Energy Production Company, L.P. (Devon) appealed two May 7, 2015, decisions of the Director, Office of Natural Resources Revenue (ONRR). The decisions affirmed and modified in part two Orders to Report and Pay Additional Royalties. By order dated August 6, 2015, we consolidated the two appeals.¹

Both appeals are subject to a 33-month statutory deadline for deciding appeals from demands or orders to pay royalties owed to the Federal government. Because the deadline has passed for the first appeal, docketed as IBLA 2015-215, this Board has lost jurisdiction to consider the appeal. We therefore sever that appeal from the second appeal, docketed as IBLA 2015-216, and dismiss it.

The Federal Oil and Gas Royalty Simplification and Fairness Act's 33-Month Deadline

Under the Federal Oil and Gas Royalty Simplification and Fairness Act (FOGRSFA), the Secretary of the Interior must issue a final decision within 33 months from the date an appellant files a notice of appeal from a demand or order to pay.² In appeals involving more than \$10,000, such as the appeals in this case, if the Secretary does not issue a decision within this timeframe, she is deemed to have affirmed the agency's decision, thereby affording the aggrieved party the right to seek

¹ Order Consolidating Appeals *Sua Sponte* and Granting and Denying in Part Motions for Extension of Time (August 6, 2015) at 1 (citing 43 C.F.R. § 4.404).

² See 30 U.S.C. § 1724(h)(1) (2012); 43 C.F.R. § 4.904(b).

judicial review.³ The 33-month period may be extended by any period of time agreed upon in writing by both the parties.⁴

Upon review of both appeals, we directed the parties to file supplemental briefing to advise the Board as to when our jurisdiction over the appeals would expire pursuant to that 33-month statutory deadline and any extensions.⁵

Statutory Deadline for IBLA 2015-215

In the first decision at issue in this appeal (ONRR-11-0007-O&G) the Director of ONRR affirmed, as modified, an Order to Report and Pay Additional Royalty issued by the State of Wyoming, Department of Audit, Mineral Audit Division, on December 16, 2010. The royalties are allegedly due on oil and gas produced from five Federal Leases, three unit agreements, and four communitization agreements during the period January 2002 through December 2004. The Board docketed Devon's appeal of this decision as IBLA 2015-215.

In their supplemental briefings, Devon and ONRR agree that Devon filed its appeal of ONRR-11-0007-O&G on January 24, 2011.⁶ And both Devon and ONRR agree that their numerous extensions under FOGRSFA totaled 988 days.⁷ But the parties disagree on the resulting deadline. Although ONRR states that the 33-month deadline has not expired for this appeal, it acknowledges that Devon has not agreed to an extension beyond July 8, 2016.⁸ Devon, however, notes that the District of Columbia Circuit Court of Appeals has held that the 33-month deadline runs from the date an appealable order is issued, as opposed to the date the order is appealed, as specified in 43 C.F.R. § 4.904(a).⁹ Under that precedent, the 33-month period began

³ See 30 U.S.C. § 1724(h)(2)(B) (2012); 43 C.F.R. § 4.906(a)(2); *Continental Resources, Inc.*, 184 IBLA 59, 61 (2013); *Burlington Resources Oil & Gas Co.*, 183 IBLA 333, 343 (2013).

⁴ 30 U.S.C. § 1724(h)(1) (2012).

⁵ Order for Supplemental Briefing (April 20, 2016).

⁶ Devon Supplemental Briefing (Devon Brief) at 3; ONRR Supplemental Briefing (ONRR Brief) at 2.

⁷ ONRR Brief at 2-3; Devon Brief at 3.

⁸ ONRR Brief at 4.

⁹ Devon Brief at 1-2 (citing *Murphy Exploration & Production Co. v. U.S. Dep't of the Interior*, 252 F.3d 473, 481 (D.C. Cir. 2001)).

running on December 16, 2010, and, according to Devon, resulted in the deadline (including all extensions) falling on May 31, 2016.¹⁰

While ONRR and Devon differ on how to properly calculate the 33-month deadline, under either party's calculation, the deadline, including extensions, has now expired for the appeal in 2015-215. ONRR's statement that the deadline has not expired is unfounded; under the statute, extensions must be agreed upon by the parties,¹¹ and ONRR acknowledges that Devon has not agreed to an extension for the appeal beyond July 8, 2016.¹²

Statutory Deadline in IBLA 2015-216

In the second decision at issue in this appeal (ONRR-12-0083-O&G) the Director affirmed, as modified, the State's September 21, 2012, Order to Report and Pay additional royalties. The royalties are allegedly due on oil and gas produced from four Federal Leases and four communitization agreements during the period January 2005 through December 2007. The Board docketed Devon's appeal of this decision as IBLA 2015-216.

Again, Devon and ONRR agree on the date that Devon filed its appeal of ONRR-11-0007-O&G, October 25, 2012, and that both parties agreed to numerous extensions totalling 613 days.¹³ But again, Devon and ONRR disagree on the resulting deadline. ONRR places the deadline at March 31, 2017, while Devon places the deadline at February 23, 2017, under *Murphy Exploration*.¹⁴ In the alternative, Devon states that following 43 C.F.R. § 4.904 results in a deadline of March 30, 2017.¹⁵

The Appeals are Severed and IBLA 2015-215 is Dismissed

Based on the calculations and representations contained in the parties' supplemental briefs, we conclude that the 33-month deadline has expired for the appeal in IBLA 2015-215, but not IBLA 2015-216. Because the deadline has passed

¹⁰ *Id.* at 2.

¹¹ 30 U.S.C. § 1724(h)(1) (2012).

¹² ONRR Brief at 4.

¹³ Devon Brief at 5; ONRR Brief at 3-4.

¹⁴ ONRR Brief at 4; Devon Brief at 4.

¹⁵ Devon Brief at 4.

for the appeal in IBLA 2015-215, the Secretary is deemed to have affirmed ONRR's decision and the Board no longer has jurisdiction over the appeal. We thus sever the two consolidated appeals and dismiss the appeal in IBLA 2015-215. The appeal in IBLA 2015-216 remains on the active docket.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior,¹⁶ we sever the consolidated appeals and dismiss the appeal in IBLA 2015-215.

/s/
Amy B. Sosin
Administrative Judge

I concur:

/s/
Christina S. Kalavritinos
Administrative Judge

¹⁶ 43 C.F.R. § 4.1.